

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

D.G., by Next Friend G. Gail Stricklin; et al.,      )  
    )  
    )  
Plaintiffs,    )  
v.    )      Case No. 08-CV-074-GKF-FHM  
    )  
C. BRAD HENRY, et al.,                                      )  
    )  
Defendants.    )  
    )  
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    )

**DEFENDANTS' MOTION FOR AN ORDER  
AMENDING THE SCHEDULING ORDER (DKT. 402)  
AND GRANTING ADDITIONAL TIME TO SUBMIT  
REBUTTAL TO PLAINTIFFS' EXPERT REPORT (MILNER)**

COME NOW the Defendants, Richard L. DeVaughn, Ronald L. Mercer, Jay Dee Chase, Steven Dow, Michael L. Peck, Garoldine Webb, Aneta F. Wilkinson, Rev. George E. Young, Sr., and Howard H. Hendrick (“OKDHS”), by and through their attorney of record, David P. Page of Riggs Abney, Neal, Turpen, Orbison & Lewis, and hereby respectfully move the Court for an order amending the Scheduling Order (Dkt. 402) and granting additional time to submit rebuttal to Plaintiffs’ Expert Report (Milner) issued by the Plaintiffs on February 17, 2011. The Plaintiffs object to this Motion.

1. On February 17, 2011, the Plaintiffs produced an expert report entitled “Foster Care Case Review of the Oklahoma Department of Human Services,” prepared by the Center for the Support of Families, Inc.

2. On February 17, 2011, counsel for the Defendants inquired, via electronic email message to counsel for Plaintiffs, when the considered materials as defined by Fed.R.Civ.P. Rule 26(a)(2)(A)(ii) would be produced. (See attached Exhibit 1.)

3. William Kapell, counsel for Plaintiffs, responded with the following short statement:

Defendants already have all of the individual children's case files that Dr. Milner considered in connection with his report – as you know, they are DHS's own files. Beyond that, Appendix C to his report lists a few additional documents and categories of documents that he also reviewed, but Defendants have ready access to all of those documents as well. There are no other documents left to produce.

4. As of the date of this filing, the Plaintiffs have still not produced the materials considered by the Plaintiffs' Expert. The parties have had additional communications, in which Kapell took the position that only the materials relied upon by the expert must be produced rather than the materials considered by the expert, whether relied upon or not.

5. As a result of the Plaintiffs refusal to produce the materials considered by their expert, the Defendants have been prejudiced, particularly by the delay.

6. The Plaintiffs have utilized the Expert's Report for a media campaign for political and other purposes, while withholding from the Defendants the data and materials considered by the Plaintiffs' expert and crippling the Defendants' ability to respond to this attack.

7. In order to allow the Defendants an ability to study the materials relied upon by the Plaintiffs' expert and appropriately respond, the Court should grant an order amending the Scheduling Order, Dkt. 402, and granting an extension of time to submit a rebuttal to the Plaintiffs' report. The extension of time should be equal to the number of days between February 17, 2011, the date the Plaintiffs submitted and published the Plaintiffs' expert's report (Milner) and the date upon which the Plaintiffs produce the data and materials considered by Plaintiffs' expert.

8. In support of this motion, the Defendants adopt by reference all of the arguments set forth in the Motion to Compel Production of Materials Considered by Plaintiffs' Expert Witnesses and Accompanying Brief.

WHEREFORE, Defendants pray for an order amending the Scheduling Order and granting additional time to submit a rebuttal to Plaintiffs' experts report and for such other and further relief as the Court deems proper in the premises.

Respectfully submitted,

**RIGGS, ABNEY, NEAL, TURPEN,  
ORBISON & LEWIS, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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